1A. Deceptive Contracts Are Not A Basis For Consideration In New York And Not Enforceable	***Legal Authorities***
	28 (2d Cir. 1989)
17. Indeed, the Second Circuit has instructed "courts [to] not be timid in voiding agreements which tend to injure the public good or contravene some established interest of society."	*Chia Huey Chou v. Remington Tai Che*, 2010 U.S. Dist. LEXIS 142766 (E.D.N.Y. 2010) citing to *Stamford Bd. of Educ. v. Stamford Educ. Ass'n.*, 697 F.2d 70, 73 (2d Cir. 1982).
18. If it was agreed that the funds would be deposited with Levine under false pretenses, to not pay federal taxes, the agreement between sellers and Levine would be unenforceable. No cause of action can arise from an agreement which has been documented falsely for an illegal purpose regardless of degree of complicity in scheme.	*AQ Asset Mgt. LLC v. Levine*, 2013 N.Y. Misc. LEXIS 2054 (N.Y. Sup. Ct., Mar. 28, 2013)

B. *Constructive Fraudulent Conveyance*	***Legal Authorities***
19. The Second Circuit has instructed that a conveyance is "deemed constructively fraudulent" under NYDCL Section 273 only if "two separate elements are satisfied: first, it is made without fair consideration, and second, the transferor is insolvent or will be rendered insolvent by the transfer in question."	*United States v. Watts,* 786 F.3d 152, 164 (2d Cir. 2015) (internal quotation marks omitted) (quoting *In re Sharp Int'l Corp.,* 403 F.3d 43, 53 (2d Cir. 2005)).
20. Constructive fraudulent conveyance under NYDCL Section 273 is "defined exclusively by the objective conditions of the asset transfer at issue, without regard to the debtor's intent in making the transfer."	*Am. Federated Title Corp. v. GFI Mgmt. Servs., Inc.,* 126 F. Supp. 3d 388, 400 (S.D.N.Y. 2015), aff'd, 716 Fed. Appx. 23, 2017 U.S. App. LEXIS 23002, 2017 WL 5499156 (2d Cir. Nov. 16, 2017).
21. "[T]he element of insolvency is presumed when a conveyance is made without fair consideration, and the	*Watts,* 786 F.3d at 165 (citations omitted); *Fannie Mae v. Olympia Mortg. Corp.,* 792 F. Supp. 2d 645, 651 (E.D.N.Y. 2011).

B. *Constructive Fraudulent Conveyance*	***Legal Authorities***
burden of overcoming such presumption is on the transferee."	
22. To prevail on a claim under §273-a, a plaintiff must establish that: (1) the conveyance was made without fair consideration; (2) at the time of transfer, the transferor was a defendant in an action for money damages or a judgment in such action had been docketed against him; and (3) a final judgment has been rendered against the transferor that remains unsatisfied.	*Priestley v. Panmedix Inc.*, 18 F. Supp. 3d 486, 497 (S.D.N.Y. 2014); *Grace v. BankLeumi Trust Co. of N.Y.*, 443 F.3d 180, 188 (2d Cir. 2006).
23. Fair consideration is given for property, or obligation, a. When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or b. When such property, or obligation, is *received in good faith* to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.	NYDCL §272; *Pryor v. Tiffen (In re TC Liquidations LLC)*, 463 B.R. 257, 268 (E.D.N.Y. 2011); *Mendelsohn v. Kovalchuk (In re APCO Merch. Servs.)*, 585 B.R. 306 (Bankr. E.D.N.Y. 2018); *Mellon Bank, N.A. v. Metro Commc'ns, Inc.*, 945 F.2d 635, 647 (3d Cir. 1991).
24. Where, as here, the Defendants fail to show both fair equivalence and good faith in the transaction, the transfer should be avoided.	*Lawson v. Barden (In re Skalski)*, 257 B.R. 707, 710 (Bankr. W.D.N.Y. 2001).
25. As suggested by the language of the statute, fair consideration under New York law has two components—the exchange of fair value and good faith—and both are required.	*Kramer v. Mahia (In re Khan)*, 2015 U.S. Dist. LEXIS 133241, 41 (E.D.N.Y. 2015).
26. Even if there is fair consideration, a transfer is still constructively fraudulent in the absence of good faith on the part	*Wimbledon Fin. Master Fund v. Wimbledon Fund, SPC*, 2016 N.Y. Misc. LEXIS 4805 (N.Y. Sup. Ct., Dec. 2016) (emphasis added), quoting *Berner Trucking, Inc. v. Brown*, 281 AD2d 924, 925, 722 N.Y.S.2d 656 (1st Dept.

B. *Constructive Fraudulent Conveyance*	***Legal Authorities***
"of both the transferor and the transferee."	2001).
27. Defendants who present no credible evidence to meet their burden of proving that the property was conveyed for "fair consideration" as defined under prevailing New York State law have not met their burden.	*United States v. Alfano,* 34 F. Supp. 2d 82, 848 (E.D.N.Y. 1999).
28. Fraudulent conveyance claim granted where no record of the release of an antecedent debt serving as consideration for transfer of residence from husband to wife.	*United States v. Nirelli*, 1997 U.S. Dist. LEXIS 15451, No. 92- CV-563C, 1997 WL 718443, at (W.D.N.Y. 1997)
29. A transferee's good faith is lacking if the transferee acted with either actual or constructive knowledge of the fraudulent scheme."	*HBE Leasing Corp.*, 48 F.3d 623, 636 (2nd Cir. 1995); NYDCL § 278(1)
30. New York courts have recognized that where the transferee is an officer, director, or major shareholder of the transferor, good faith is lacking as a matter of law.	*Sharp Int'l Corp. v. State St. Bank & Trust Co.*, 403 F.3d 43, 54 (2d Cir. 2005); *Farm Stores, Inc. v. Sch. Feeding Corp.*, 102 A.D.2d 249, 477 N.Y.S.2d 374 (2d Dept. 1984).
31. When preferences are given to a debtor corporation's shareholders, officers, or directors, such transfers are *per se* violations of the good faith requirement.	*Sharp Int'l Corp. v. State St. Bank & Trust Co.*, 403 F.3d 43, 54 (2d Cir. 2005); *Lyman Commerce Solutions, Inc. v. Lung*, 2015 U.S. Dist. LEXIS 51447, 21(S.D.N.Y, 2015); *Sardis v. Frankel*, 113 A.D.3d 135, 142, 978 N.Y.S.2d 135 (1st Dept. 2014); *Geltzer v. Artists Mktg. Corp. (In re Cassandra Group)*, 338 B.R. 583, 594 (Bankr S.D.N.Y. 2006); *Am. Media, Inc. v. Bainbridge & Knight Labs., LLC*, 135 A.D.3d 477, 478, 22 N.Y.S.3d 437 (1st Dept. 2016).

C. ***Participation In the Fraudulent Transfer; 11 U.S.C. 550(a)***	***Legal Authorities***
32. "Under New York law, a creditor may recover money damages against parties who participate in the fraudulent transfer	*Cadle Co. v. Newhouse*, 74 F. App'x 152, 153 (2d Cir. 2003); *Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1172 (2d Cir.

C. *Participation In the Fraudulent Transfer; 11 U.S.C. 550(a)*	*Legal Authorities*
and are either transferees of the assets or beneficiaries of the conveyance."	1993); *RTC Mort. Trust 1995-S/N1 v. Sopher*, 171 F. Supp. 2d 192, 201 (S.D.N.Y. 2001).
33. Under federal law, one participates in a fiduciary's breach if he or she affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables it to proceed.	*Sharp Int'l Corp. v. State St. Bank & Trust Co. (In re Sharp Int'l Corp.)*, 403 F.3d 43, 51(2nd Cir. 2005) (citing to *Diduck v. Kaszycki & Sons Contractors, Inc.*, 974 F.2d 270, 284 (2d Cir. 1992) (2d Cir. 2003).
34. Masterminding the fraudulent transfers, using some of the transferred assets to pay personal expenses, and diverting funds to cheat creditors is sufficient to support a finding of personal involvement in a fraudulent conveyance.	*Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1172 (2d Cir. 1993)
35. An officer acting as a signatory on its corporate bank accounts and who authorizes expenditures to benefit himself and his family members, benefits both directly and indirectly and is liable for the entire amount of the fraudulent transfers.	*Fannie Mae v. Olympia Mortg. Corp.*, 2014 U.S. Dist. LEXIS 79479 (E.D.N.Y. June 10, 2014).
36. The owner of the transferee corporation, the individual and the defendant was, "[b]y any meaning of the word" a "beneficiary" of the corporations' fraudulent transfers and thus liable for the fraudulent conveyance	*U.S. v. Lax,* 414 F. Supp. 3d 359, 366-367 (E.D.N.Y. 2019); *Schnelling v. Crawford (In re James River Coal Co.)*, 360 B.R. 139, 161 (Bankr. D. Va. 2007)

D. *Alter Ego*	*Legal Authorities*
37. Alter ego liability exists under New York law "when a parent or owner uses the corporate form to achieve fraud, or when the corporation has been so dominated by an individual or another corporation . . . that its separate identity so disregarded that it primarily transacted the dominator's business rather than its own.	*City of Almaty v. Ablyazov*, 2019 U.S. Dist. LEXIS 55183 (Bankr. S.D.N.Y. 2019); *Kiobel v. Royal Dutch Petroleum*, 621 F.3d 111, 195 (2d Cir. 2010) (internal quotation marks and citation omitted).

D. *Alter Ego*	***Legal Authorities***
38. The Second Circuit set forth ten non-exhaustive factors to assess whether a corporation has been sufficiently dominated to warrant piercing the corporate veil: (1) [T]he absence of the formalities and paraphernalia that are part and parcel of the corporate existence, i.e., issuance of stock, election of directors, keeping of corporate records and the like, (2) inadequate capitalization, (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors, and personnel, (5) common office space, address and telephone numbers of corporate entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arm's length, (8) whether the corporations are treated as independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own.	*In Wm. Passalacqua Builders, Inc. v. Resnick Devs. S., Inc.*, 933 F.2d 131, 134 (2d Cir. 1991).
39. "Factors to be considered in determining whether the owner has 'abused the privilege of doing business in the corporate form' include whether there was a 'failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal use.	*East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc.*, 66 AD3d 122, 127, 884 N.Y.S.2d 94 (2009), quoting *Millennium Constr., LLC v. Loupolover*, 44 AD3d 1016, 1017, 845 N.Y.S.2d 110 (2007).
40. An action to pierce the corporate veil and to hold the owners liable for an underlying corporate obligation is	*Lederer v. King*, 214 AD2d 354, 625 N.Y.S.2d 149 [1st Dept. 1995].

D. *Alter Ego*	***Legal Authorities***
"equitable in nature" and dependent "on the attendant facts and equities".	
41. A Plaintiff is not required to prove actual fraud in order to pierce the corporate defendant's veil, but [must prove] only that the individual defendant's control of the corporate defendant was used to perpetrate a wrongful or unjust act toward plaintiff.	*BP 399 Park Ave. LLC v. Pret 399 Park, Inc.*, 150 A.D.3d 507, 508 [1st Dept. 2017] (citing to (*Lederer v King*, 214 AD2d 354, 625 N.Y.S.2d 149 [1st Dept. 1995]; *Baby Phat Holding Co., LLC v. Kellwood Co.*, 123 AD3d 405, 407, 997 N.Y.S.2d 67 (App. Div.1st Dept.).
42. Under Debtor Creditor law, fraud by an individual is justification to pierce the corporate veil and hold the individual liable for the debts of a corporation.	*Commissioners of the State Ins. Fund v Kalafatis,* 2011 N.Y. Misc. LEXIS 3469 (NY County Sup. Ct.) (citing to *In re Rave Communications, Inc.*, 138 B.R. 390 (Bankr. S.D.N.Y. 1992).
43. While fraud certainly satisfies the wrongdoing requirement, other claims of inequity or malfeasance will also suffice.	*Baby Phat Holding Co., LLC v. Kellwood Co.*, 123 A.D.3d 405, 407[1st Dept. 2014]; *TNS Holdings v. MKI Sec. Corp.*, 92 NY2d 335, 339, 703 NE2d 749, 680 N.Y.S.2d 891 (1998)).
44. Courts have recognized piercing of the corporate veil when an individual exercised complete domination of the corporation, which was used to commit a fraud or wrong against the plaintiff, and abused the privilege of doing business in the corporate form.	*NPR. LLC v. Met Fin Management, Inc.*, 63 A.D.3d 1128, 882 N.Y.S.2d 253 (2nd Dept, 2009), *cf. Matter of Morris v. New York State Dept. of Taxation & Fin.*, 82 N.Y.2d 135, 623 N.E.2d 1157, 603 N.Y.S.2d 807;*Millennium Constr., LLC v. Loupolover*, 44 AD3d 1016, 845 N.Y.S.2d 110 (2007).
45. Where an undercapitalized corporation is unable to pay a judgment debt and there has been "disregard of corporate formalities and personal use of corporate funds,[there is] sufficient evidence of wrongdoing to justify piercing the corporate veil".	*Austin Powder Co. v. McCullough,* 216 AD 2d 825, 827, 628 N.Y.S. 2d 855 (App. Div. 3d Dept. 1995); *Walkovszky v. Carlton,* 18 N.Y.2d 414, 420, 276 N.Y.S.2d 585, 223 N.E.2d 6 (1966).
46. When a corporation has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the dominator's business instead of its own and can be called the other's alter ego, the	*Austin Powder Co. v. McCullough,* 216 A.D.2d 825, 827, 628 N.Y.S. 2d 855 (App. Div. 3d Dept. 1995); *First Horizon Bank v. Moriarty-Gentile*, 2015 U.S. Dist. LEXIS 165695, (Bankr. E.D.N.Y. 2015); *Gardiners Bay Landscape v. Postiglione (In re Postiglione)* 2019 Bankr. LEXIS 1887 (Bankr. E.D.N.Y

D. ***Alter Ego***	***Legal Authorities***
corporate form may be disregarded to achieve an equitable result.	2019); *Angelo Tomasso, Inc. v. Armor Construction & Paving, Inc.*, 187 Conn. 544, 556-57, 447 A.2d 406 (1982); *Balmer v. 1716 Realty LLC*, No. 05 CV 839 (NG)(MDG), 2008 U.S. Dist. LEXIS 38113, 2008 WL 2047888 (E.D.N.Y. May 9, 2008).

E. Deceptive Contracts Are Not A Basis For Consideration In New York And Not Enforceable	***Legal Authorities***
47. The courts will not recognize contracts which rest upon an illegal consideration, and will not order restitution in so far as one has been performed, but may interfere and prevent the arrangement being further consummated in case of partial performance.	*Di Tomasso*, 250 A.D. 206, 209, 293 N.Y.S. 912, 916 (App. Div. 2nd Dept. 1937).
48. A contract is void in New York and unenforceable as a matter of public policy when its performance would practice fraud or deception on a third party.	*Chia Huey Chou v. Remington Tai Che*, 2010 U.S. Dist. LEXIS 142766 (E.D.N.Y. 2010) citing to *Contemporary Mission, Inc. v. Bonded Mailings, Inc.*, 671 F.2d 81, 86 (2d Cir. 1982) (Oakes, C.J. concurring and dissenting)
49. As a matter of public policy, fraud and deception practiced on a third party . . . will invalidate a New York contract, at least where there is a 'direct connection between the illegal transaction . . . and the obligation sued upon.	*Chia Huey Chou v. Remington Tai Che*, 2010 U.S. Dist. LEXIS 142766 (E.D.N.Y. 2010) (quoting *McConnell v. Commonwealth Pictures Corp.*, 7 N.Y.S.2d 465, 471, 166 N.E.2d 494, 199 N.Y.S.2d 483 (1960))
50. "[E]ven where a contract is not itself unlawful, the bargain may still be illegal under New York law if it is closely connected with an unlawful act.").	*Chia Huey Chou v. Remington Tai Che*, 2010 U.S. Dist. LEXIS 142766 (E.D.N.Y. 2010) citing to *United States v. Bonanno Organized Crime Family of La Cosa Nostra*, 879 F.2d 20, 28 (2d Cir. 1989)
51. Indeed, the Second Circuit has instructed "courts [to] not be timid in voiding agreements which tend to injure the public good or contravene some established interest of society."	*Chia Huey Chou v. Remington Tai Che*, 2010 U.S. Dist. LEXIS 142766 (E.D.N.Y. 2010) citing to *Stamford Bd. of Educ. v. Stamford Educ. Ass'n.*, 697 F.2d 70, 73 (2d Cir. 1982).

E. Deceptive Contracts Are Not A Basis For Consideration In New York And Not Enforceable	***Legal Authorities***
52. If it was agreed that the funds would be deposited with Levine under false pretenses, to not pay federal taxes, the agreement between sellers and Levine would be unenforceable. No cause of action can arise from an agreement which has been documented falsely for an illegal purpose regardless of degree of complicity in scheme.	*AQ Asset Mgt. LLC v. Levine*, 2013 N.Y. Misc. LEXIS 2054 (N.Y. Sup. Ct., Mar. 28, 2013)

Dated: July 10, 2024

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Jeffrey P. Nolan

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August 5, 2024

The Hon. Alan S. Trust
Chief Judge
United States Bankruptcy Court
Eastern District of New York
Alphonse M. D'Amato U.S. Courthouse
290 Federal Plaza
Central Islip, NY 11722

Re: Case No. 8-20-08049 (AST)

Your Honor,

We represent Arvind Walia and Niknim Management, Inc. in the above noted Adversary Proceeding which was tried before the Court on July 24, 2024.

At closing argument Your Honor requested that the Defendants explain what occurred to some one million three-hundred dollars ($1.3 million) dollars which were disbursed as funds based on the sale of Porteck Corporation to Physicians Practice Plus, LLC.

After consultation with Mr. Walia, the answer to Your Honor's inquiry appears to be found in Plaintiff's Exhibits 1 (the Asset Purchase Agreement) and 5 (Post Closing payment calculation contained in an email from Mr. Walia to Mr. Parmar and others).

Exhibit 5 shows a deduction from the purchase price of five hundred thousand dollars ($500,000.00) to pay down an advance (loan), alleged to be by CHT to Porteck. Six hundred thousand dollars ($600,000.00) was deducted to enable the payment of a loan assumed by CHT. Two hundred thousand dollars ($200,000.00) was deducted for Abstract fees.

Together the listed deductions on Exhibit 5 contain a record explanation of the "missing" amounts, the

details of which Defendant Walia was unable to recall during his cross-examination and questioning by Your Honor.

Respectfully,
Eugene R. Scheiman

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By email to:
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August 5, 2024

The Honorable Alan S. Trust
United States Bankruptcy Court
Eastern District of New York
Alfonse M. D'Amato Federal Courthouse
290 Federal Plaza
Central Islip, New York 11722

Re: **In re Orion HealthCorp., Inc., et al.**
Howard M. Ehrenberg v. Arvind Walia; Niknim Management, Inc.
Adv. Proc. No. 20-08049 (AST)

Dear Judge Trust:

We are counsel for Howard M. Ehrenberg in his capacity as Liquidating Trustee of Orion Healthcorp, Inc., *et al.* (the "Liquidating Trustee") in the above referenced adversary proceeding. I write to address the issue raised by the Court to the parties at the end of Trial: what evidence was introduced as to the discrepancy in price and distribution of funds surrounding the Porteck APA.

As the Court may recall, the Asset Purchase Agreement ("APA") was dated March 2015. [**Pl Trial Ex 3**] On summary judgment, Plaintiff established through the forensic analysis testified to in the Affidavit of Frank Lazzara, that on March 2, 2015, $9.8 M was deposited from the Debtors' bank account at M&T Bank into the Debtors' IOLA Account which sum was disbursed the following day on March 3, 2015, at the closing. [**Dkt No. 57**; Aff'd of Frank Lazzara in Support of Plaintiff's SJM, §8] This fact was memorialized in the parties Joint Pretrial Memorandum as an established fact. **[Joint Pretrial Memorandum Dkt. No. 137, §19, 20**] $6,800,000 was disbursed to the Sellers and the remaining balance of the sale proceeds, $3,000,000 was disbursed to First

United Health, LLC, a Paul Parmar controlled entity. [**Joint Pretrial Memorandum, Dkt. No. 137, §20**]

As the Court noted at trial, the Disbursement Authorization and Itemization Form dated March 3, 2015, **Pl Trial Ex. 4**, evidences $7M distributed to the Sellers, or on their behalf, at the closing. Coupled with the First Transfer of $2.5 M made one year later, a total of $9,500,000 was distributed to the Defendants. Mr. Walia's testimony at trial was that the purchase price was $10.8M, which left an unexplained discrepancy of $1.3M.

Defendant Walia directs the Court to **Pl Trial Ex. 5** to explain the discrepancy. **Pl Trial Ex 5,** is an email prepared by the Defendant one year removed from the closing. The math in the email is not accurate. The $600,000 for a "PCA Loan" was already accounted for in the $7MM disbursed to Seller as part of the Disbursement Authorization and Itemization Form dated March 3, 2015, **Pl Trial Ex. 4.** (see entry "People's United Bank, $597,648.59"). The APA closing documents do not reflect any sum paid to Abstract Business Advisors at closing, let alone $200,000, and Walia testified at trial this was handled by Parmar.

The testimony of a purchase price of $10.8M is not corroborated by the trial record.

Respectfully submitted,

/s/ Jeffrey P. Nolan

Jeffrey P. Nolan

cc: Sanford Rosen, Esq.
Counsel for Defendants (Via ECF)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	Chapter 11
ORION HEALTHCORP, INC.[1]	Case No. 18-71748 (AST)
Debtors.	(Jointly Administered)
HOWARD M. EHRENBERG IN HIS CAPACITY AS LIQUIDATING TRUSTEE OF ORION HEALTHCORP, INC., ET AL.,	Adv. Pro. No. 20-08049 (AST)
Plaintiff,	Trial: July 24, 2024 Time: 9:30 a.m. Place: Courtroom 960 U.S. Bankruptcy Court 290 Federal Plaza Islip, NY
v.	
ARVIND WALIA; NIKNIM MANAGEMENT, INC.,	PTC: July 17, 2024 Time: 1:30 p.m.
Defendants.	Judge: Hon. Alan S. Trust

NOTICE OF ERRATA AND LODGING OF CORRECTED EXHIBIT A TO TRIAL BRIEF OF PLAINTIFF, HOWARD M. EHRENBERG AS LIQUIDATING TRUSTEE OF ORION HEALTHCORP, INC.

PLEASE TAKE NOTICE that, in connection with the trial in the above-captioned adversary proceeding, Plaintiff Howard M. Ehrenberg, in his capacity as Liquidating Trustee of Orion Healthcorp., Inc. ("Plaintiff") hereby files this Notice of Errata and lodges a true and

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Orion Healthcorp, Inc. (7246); Constellation Healthcare Technologies, Inc. (0135); NEMS Acquisition, LLC (7378); Northeast Medical Solutions, LLC (2703); NEMS West Virginia, LLC (unknown); Physicians Practice Plus Holdings, LLC (6100); Physicians Practice Plus, LLC (4122); Medical Billing Services, Inc. (2971); Rand Medical Billing, Inc. (7887); RMI Physician Services Corporation (7239); Western Skies Practice Management, Inc. (1904); Integrated Physician Solutions, Inc. (0543); NYNM Acquisition, LLC (unknown) Northstar FHA, LLC (unknown); Northstar First Health, LLC (unknown); Vachette Business Services, Ltd. (4672); Phoenix Health, LLC (0856); MDRX Medical Billing, LLC (5410); VEGA Medical Professionals, LLC (1055); Allegiance Consulting Associates, LLC (7291); Allegiance Billing & Consulting, LLC (7141); New York Network Management, LLC (7168). The corporate headquarters and the mailing address for the Debtors listed above is 1715 Route 35 North, Suite 303, Middletown, NJ 07748.

complete copy of the Ruling Conference transcript for the hearing dated April 10, 2024, in the above referenced adversary which includes adversary no. 20-08052(AST) (as the matters were called together on calendar).

Dated: August 8, 2024

Respectfully submitted,
PACHULSKI STANG ZIEHL & JONES LLP

/s/ *Jeffrey P. Nolan*

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Counsel for Plaintiff, the Liquidating Trustee

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

Case No. 18-71748-ast

- x

In the Matter of:

ORION HEALTHCORP, INC., et al.,

Debtor.

- x

Adv. Case No. 20-08049-ast

- x

HOWARD M. EHRENBERG, in his capacity as liquidating trustee of Orion HealthCorp, Inc., et al.,

Plaintiffs,

v.

ARVIND WALIA; NIKNIM MANAGEMENT, INC.,

Defendants.

- x

Adv. Case No. 8-20-08052-ast

- x

HOWARD M. EHRENBERG in his capacity as LIQUIDATING TRUSTEE OF ORION HEALTHCORP, INC., et al.,

Plaintiffs,

v.

ABRUZZI INVESTMENTS, LLC,

Defendants.

- x

United States Bankruptcy Court

290 Federal Plaza

Central Islip, New York 11722

April 10, 2024

11:29 AM

B E F O R E :

HON ALAN S. TRUST

U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

HEARING re Recovery Of Certain Transfers

HEARING re Summary Judgment

Transcribed by: Rita Weltsch

A P P E A R A N C E S :

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GIULIANO LAW, P.C.

Attorney for the Counter-Claimant Abruzzi Investments

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BY: ANTHONY F. GIULIANO

PROCEEDINGS

MR. ROSEN: Good morning, Judge.

THE COURT: Good morning.

MR. ROSEN: You're muted, Judge.

THE COURT: That will make for a short ruling conference.

MR. ROSEN: Sorry. That's better. We can hear you now.

THE COURT: I've been ruling for the last hour-and-a-half. You guys didn't hear it?

MR. ROSEN: I'm so sorry. Can you do it again?

THE COURT: Sorry, my throat is sore now.

CLERK: Good morning. I am Alexis -- excuse me.

THE COURT: It's contagious.

CLERK: Good morning. I am Alexis Hennigan, backup courtroom deputy for Chief Judge Alan S. Trust presiding. These hearings are being recorded. Please speak clearly. Once you hear your case called, please give your appearance. And remember, before speaking please state your name so we can get a clear record of who is appearing. All parties not speaking, please put your phone on mute.

Case Number 20-08049, Howard M. Ehrenberg v. Arvind Walia, et al, and Case Number 20-08052, Howard M. Ehrenberg v. Abruzzi Investments LLC, et al.

THE COURT: Let's take appearances please. First

in Walia.

MR. ROSEN: Good morning, Judge. Sanford Rosen, Rosen & Associates. And we are counsel for the Defendants.

MR. SCHEIMAN: Good morning, Your Honor. Eugene Sheiman with the Law Firm of Eugene Scheiman, co-counsel for the Defendants.

MR. NOLAN: Good morning, Your Honor. Jeff Nolan appearing on behalf of the Plaintiffs, Howard Ehrenberg, the Trustee of the Orion Liquidating Trust.

MR. EHRENBERG: Good morning, Your Honor. I'm Howard Ehrenberg, the liquidating trustee.

THE COURT: All right. Do we have counsel in Abruzzi also?

MR. GIULIANO: Yes, Your Honor. Good morning. Good morning, Your Honor. Anthony Giuliano for the defendants in the Abruzzi matter.

THE COURT: All right. And Mr. Nolan, you're still representing Mr. Ehrenberg in Abruzzi?

MR. NOLAN: Yes, Your Honor. Jeff Nolan appearing on behalf of the plaintiff in the 08052 Abruzzi adversary on behalf of the plaintiff.

THE COURT: All right. I'm going to start with the ruling conference in 20-08052, Ehrenberg v. Abruzzi Investments and John Petrozza.

This is the Court's ruling made in narrative form

under Rule 7052 and will include the Court's findings of undisputed facts and conclusions of law. This is a core proceeding under Title 28, Section 157(b)(2)(H). The venue is proper in this court. Due and proper notice of the various motions have been provided to the parties. The Court has before it Plaintiff-Trustee's motion for summary judgment, the Defendant's cross-motion for summary judgment, and motion to strike, which raises various evidentiary issues.

The Court has determined that the following facts are not subject to a genuine dispute and are therefore established in this case pursuant to Rule 56(g) of the Federal Rules of Civil Procedure as incorporated by Rule 7056. The Court will also address the myriad evidentiary objections raised by the Defendants to the extent that they relate to the determination that this Court has made as to what facts are not in genuine dispute.

This adversary proceeding revolves around one payment, a $250,000 transfer made to one or more of the defendants. That transfer came prepetition from funds that belonged to one or more of the debtors. Those funds of $250,000 were ultimately repaid, but repaid to a non-debtor entity. However, for purposes of this summary judgment motion, the only issue before the Court is the transfer that was made of the $250,000.

The Court has determined for the reasons that follow to deny both parties' cross-motions for summary judgment and will issue a trial scheduling order on the pending claims.

The Debtors are the various multiple entities that are listed in the adversary proceeding. I won't recite all 18 or so of them in the record, but they are apparent on the face of the adversary.

Those entities prepetition operated a consolidated enterprise of companies which were aggregated through a series of acquisitions and operated in the healthcare sector space, primarily in revenue and practice management.

At all times relevant, John Petrozza, who I will refer to as Petrozza, has been a resident of the State of Florida who did business in New York. His entity, Abruzzi Investments, is a Limited Liability Company that had no employees, no officers, and no directors but was managed by Mr. Petrozza. I'll refer to them collectively as Defendants. The only activity undertaken by Abruzzi was to invest money on Mr. Petrozza's behalf.

Between 2015 and 2016, Mr. Petrozza considered Paul Parmar, who was the primary principal of the Debtors, as a close friend. Mr. Parmar was at all relevant times the primary operating person, officer, and controlling shareholder behind the Debtors.

In June of 2013, Mr. Petrozza commenced his business relationship with the Debtors when he was approached by Mr. Parmar and asked to invest $4 million in Constellation Healthcare Investment, which I'll refer to as CHI, which is a non-debtor entity. CHI allegedly held an ownership interest in the Debtor entity, Orion HealthCorp Inc., which I will refer to as Orion. According to the Defendants, their purpose in investing $4 million in CHI was to acquire 100 percent ownership interest in Orion. Mr. Petrozza subsequently made the $4 million investment in what he believed was CHI. Additionally, he paid approximately $300,000 to Orion to cover IPO and expenses associated with his investment. The money paid by Mr. Petrozza was sent to Parmar and subsequently deposited into an IOLTA account held at Robinson Brog Leinwald Greene Genovese & Gluck, referred to as Robinson Brog, in the name of the non-debtor entity, Constellation Health LLC.

In December of 2015, the United States District Court for the Southern District of Texas entered a judgment against Orion in the amount of $194,185. That Southern District of Texas judgement ultimately resulted in a proof of claim being filed in the bankruptcy case and assigned as Claim Number 1000. That judgment remained outstanding at the time the Debtors filed for bankruptcy relief.

On March 9th of 2016, a lawsuit was filed against

the debtor entities Physician Practice Plus and CHT by a plaintiff called Criterions LLC. On November 30th of 2017, an adverse judgement was entered against those debtors, Physician Practice and CHT, for some $77,000. That judgement also remained outstanding at the petition date.

In November of 2016 as part of a large-scale private transaction involving taking CHT private, Mr. Petrozza met with Mr. Parmar and the board of directors who approved to go-private transaction so they could all make "a gazillion dollars". Petrozza asserted he was an investor in one or more of the debtors at the time of the go-private transaction and wanted to receive a multiple on his $4 million investment.

Along the way, several fictitious entities have been created to represent ownership of the equity of CHT. One of those entities was Lexington Landmark Services, Inc., which as far as Mr. Parmar knew, did not exist as a legitimate business. While his name was signed on certain documents, he claimed his signature was forged and that he never gave Robinson Brog authority to receive monies on behalf of Landmark Services.

Mr. Petrozza testified that on May 24th of 2017, he asked Mr. Parmar for a personal loan of $200,000. He testified that he wanted the money in order to acquire a lease to a certain property in Florida. The Court has not

been provided with any specifics concerning what property or what lease.

In any event, on that same day, on May 24th, 2017, Mr. Parmar directed partner Mitchell Greene at Robinson Brog to wire $250,000 from the Debtor's IOLTA account to Mr. Abruzzi. Later that same day at 8:39 p.m., Parmar emailed Mr. Greene to wire the $250,000 and he did not care which account the funds were taken out of.

The next day, May 25, Robinson Brog confirmed to Mr. Parmar that the $250,000 wire was in fact sent from the Debtor's IOLTA account to Abruzzi. The funds were sent from an account held in the name of Constellation Health/CHT Closing. That transaction is what the pleadings refer to and what the Court will refer to as the Transfer.

The Debtor's books and records evidence no antecedent debt owed to the Defendants at any time during the calendar year 2017. Mr. Petrozza could not explain why he asked for $200,000 but received $250,000.

Mr. Petrozza further testified that shortly after receiving the wire, the deal for the property that he was working on in Florida fell through and he no longer needed the money. He then advised his assistant, Lisa Basich, to return the money to Mr. Parmar. Mr. Parmar then provided wiring instructions to Ms. Basich, who then directed that the funds be wired back as directed by Mr. Parmar.

On June 28th of 2017, $250,000 was liquidated from an investment account of Abruzzi and forwarded to Mr. Petrozza's checking account. The next day, Mr. Abruzzi wired $250,000 to an entity called Sunshine Star LLC. Sunshine Star was a newly-created entity, not a debtor entity, but was created by or for the benefit of Mr. Parmar and his at that time girlfriend, Elena Sartison. The Debtor's books and records reflect no antecedent debt owed to Sunshine Star during 2017.

In October of 2017, Sunshine Star closed the bank account into which the $250,000 had been wired. Defendants admit that the transfer to Sunshine did not benefit any of the Debtors and that the Defendants had provided no services for the debtors.

The multiple entities which ended up filing for bankruptcy on March 16, 2018 include the entities the Court has described thus far. The Debtor's cases had been jointly administered.

In July of 2018, Defendant Abruzzi Investment, filed Claim Number 10062, identifying itself as a shareholder of CHT. That day Defendant also filed Claim 10063, asserting it held a 49 percent member interest in CHT.

This adversary proceeding was commenced in March of 2020. The only transaction at issue for summary judgment

purposes, as I said, is the $250,000 wire transfer sent to Abruzzi on May 25, 2017. That transfer was from the funds that belonged to one or more of the Debtors.

The parties have filed various pleadings throughout this case, including and answer and counterclaim, a plaintiff's motion for summary judgment, defendant's cross-motion for summary judgment, and motions to strike various of the evidentiary affidavits submitted by the trustee. The various motions have been on submission with the Court since May of 2022.

I will let the parties know it is not this Court's practice to hold matters on submission for nearly that length of time. So the Court's apologies to the parties for the length of time it's taken to get to today's rulings.

Standards for summary judgement are well known by the parties. The Court won't recite them. The central issue is whether or not there exists genuine issues of material fact -- whether or not there are genuine issues of material fact that are in dispute such that judgment as a matter of law can or cannot be awarded to either party.

Where cross-motions for summary judgment are pending, the Court must make an independent valuation of each motion separately.

Even though the Court is denying both summary judgement motions because the matter will ultimately be

tried, I'm going to go ahead and give you my evidentiary rulings on the affidavits that were presented to the Court because the Court anticipates those affidavits will appear again at the time of trial and there is no reason to redo these objections.

With respect to the affidavit of Edith Wong and the declaration of Frank Lazzara, Defendants have objected under Rule 901 of the Federal Rules of Evidence, which is an authentication requirement. The caselaw that addresses Rule 901 is fairly replete that the burden of authentication is not particularly high. The Defendant objects to the Wong affidavit and Lazzar declarations, including emails and other business records that are identified in those declarations because Ms. Wong and Mr. Lazzar did not constitute witnesses with knowledge of the items that are par of what they are claimed to be.

However, in a related adversary proceeding arising out of the same Orion case, the same evidentiary objections were raised by the same counsel as here. Anecdotally, the district court in that action determined that personal knowledge is not a requirement for the authentication of written documents in the Second Circuit. See Aquila Alpha v. Ehrenberg, 2023 WL 2164268 *4 (E.D.N.Y. Feb. 22, 2023), affirmed by the Second Circuit, 95 F.4th 98.

The evidentiary objections to the Wong affidavit

and Lazzar affidavit for 901 purposes are overruled. There's an adequate basis for the Court to accept those documents as part of the summary judgment record, which means that they can then become part of the trial record.

As to Ms. Sartison, the Debtor also -- the Defendants also objected to her declaration which contained the opening and closing bank statement of M&T for Sunshine Star, again, based on authentication. Again, there is an adequate basis that's set out in the Sartison affidavit to authenticate those documents, including the Ms. Sartison's declaration that "At the request and direction of Mr. Parmar, I opened an account at M&T Bank for Sunshine Star LLC."

As the creator of the bank account for Sunshine, there is clearly enough circumstantial evidence to authenticate the opening and closing statements of that very same bank account. Refer you all back again to Acquila Alpha. Both the District Court's opinion and the Second Circuits affirmed this.

The Defendants also object to the Wong and Lazzar declarations as inadmissible expert testimony. However, there is no specific statement contained in either declaration which should be stricken because it is providing an opinion. Both of those declarations were offering fact testimony and aren't proffered as expert testimony, so 703

is irrelevant.

As far as the Defendant's hearsay objection, that too is overruled obviously under the well-known hearsay exception for business records under 803(6). The records attached are business records and the objection is overruled. Hearsay objections and business records exceptions have been routinely construed in favor of admissibility due to the general trustworthiness of regularly-kept records and the need for this type of evidence in many cases, particularly cases which an independent trustee is appointed to oversee the administration of a case and/or litigation arising therefrom. I'll refer the party to Arista Records v. Lime Group, 784 F.Supp.2d 398, 421 and Chevron Corp. v. Donziger, 974 F.Supp.2d 362, 691-692.

With respect to the question of whether or not the $250,000 was property of the estate, the Court has determined that as a matter of law, the funds transferred were property of the bankruptcy estate -- would have been property of the bankruptcy estate had the bankruptcy estate had the bankruptcy case existed at the time that the transfer occurred. The record is undisputed that the Debtors utilized the IOLTA account at Robinson Brog to hold large amounts of funds and for multiple transactions. Just because the fund were held in an IOLTA account does not make

them not funds of the Debtors. New York Fiduciary Law Section 4971 is clear that monies that are held by an attorney or held in a fiduciary capacity from a client for a client and/or for a designated beneficial owner. The Debtors had control and custody over the funds while they sat in the Robinson Brog account and had the power to direct their disposition.

The Court finds no genuine dispute as to whether or not the funds transferred to the Defendants are recoverable as property of the estate.

In terms then of the substantive legal theory, trustee moves forward first on Bankruptcy Code Section 548(a)(a), which allows the recovery of any property that was transferred with actual intent to hinder, delay, or defraud any entity to which the Debtor was or became liable, as well as New York DCL Section 276, which provides that every conveyance made and every obligation incurred with actual intent to hinder, delay, or defraud present or future creditors is fraudulent. The two statutes are adequately identical for the Court to conduct one analysis of both. See Janitorial Close-out City Corp., 2013 WL 492375 *5 (Bankr. E.D.N.Y. 2013).

Transfer may be avoided either under 548(a) of the Bankruptcy Code or New York DCL 276. If the Debtor had an interest in the property transferred, which is undisputed

here -- as to which there is no genuine dispute here. The transfer occurred within two years of the petition date. That is undisputed here. And the transfer was made with actual intent to hinder, delay, or defraud a creditor. That's where the factual dispute arises.

The trustee has the burden of establishing the actual intent of the transfer or debtor by clear and convincing evidence. See In re Jacobs, 394 B.R. 646, 658 (Bankr. E.D.N.Y. 2008).

Because it is difficult to find direct evidence of actual fraudulent intent, courts in this circuit look to certain badges of fraud which can constitute circumstantial evidence of fraudulent intent. See In re Kaiser, 722 F.2d 1574, 1582-1583 (2d. Cir. 1983). The parties generally agree on what those badges of fraud can include. Lack of consideration, close association between the parties, the financial condition of the transferor, chronology of events and transactions under inquiry.

The Court has determined that a genuine issue of fact disputes as to whether or not there was adequate consideration for the transfer of the $250,000. In the shortest way to state it, Plaintiff asserts that it was simply a transfer for no consideration. The Defendant asserted it was a loan, and a loan supported by a promise to repay.

The Defendants rely on certain text messages to or from Mr. Petrozza where he requests the $200,000 in exchange for a promise to repay it. The record is clear though that there is no signed promissory note. There doesn't appear to be any interest charged for the loan or any collateral provided.

Based upon the entire record before the Court, there is a genuine dispute of material fact as to whether or not there was consideration for the transfer at the time the transfer was made and whether or not that consideration is adequate.

On the close relationship, there is a close relationship in this record between Petrozza and Mr. Parmar for the reasons that I've already outlined. There doesn't appear to be any retention of possession or benefit of the property by the Debtor once transferred. Funds went to Petrozza. Petrozza then paid the funds back in the equivalent amount that he received, although he didn't pay it into the right entity.

As far as the financial condition of the Debtor before or at the time of the transfer, the undisputed evidence before the Court based upon an expert opinion from B. Reily is that the Debtors were insolvent on the measuring date, the probative date, the date of the transfer. So insolvency condition here exists.

In addition, the record is clear that there was the Southern District of Texas judgement outstanding at the time -- prior to the time that the transfer was made and the FBI had seized over $20 million from the IOLTA account prior to the time of the transfer.

Questions certainly do exist concerning the overall chronology of events and whether or not the transaction should have been considered legitimate at the time that it was made, but that is a fact issue for the court to determine after trial.

With respect to the Trustee's cause of action for a constructively fraudulent transfer and New York DCL 273-a, New York law is clear that any conveyance made without fair consideration when debtor is a defendant in action for money judgement and a judgement has been docketed against him can be set aside as a constructively fraudulent transfer. To prevail, the Plaintiff must establish that the conveyance was made without fair consideration and for the same reasons that I discussed in connection with the actual fraudulent transfer claim. The Court has found a question of fact as to whether or not there was fair consideration for the transfer at the time it was made. The other elements under 273-a have been satisfied as a matter of law by the trustee.

Again, as I've noted, the expert insolvency report of Craig Jacobson from B. Reily is unrebutted in the summary

judgement record. So Orion was insolvent on May 25, 2017.

The fair consideration under Section 272 of DCL, the Court has also found a question of fact as to whether or not the consideration -- whether consideration was provided and whether that consideration was fair for 272 purposes. The Court has also found a question of fact as to whether or not the defendants were operating in good faith at the time that the transfer was made. See Sardis v. Frankel, 113 A.D.3d 135, 141-142.

So for all of those reasons, both motions for summary judgement have been denied. And again, the motion to strike as to the evidence, the Court has already ruled on that.

The Court has also noted in the pleadings that the parties have a serious disagreement about the impact of Section 550 of the Bankruptcy Code. 550 is only triggered once a transfer has been avoided. I won't spend any time talking about 550 because to this point no transfer has been avoided so there is no reason to talk about who might ultimately have liability for the transfer if it were set aside.

I'm going to set a trial on the claim in the adversary proceeding. As I said, for Rule 56(g) purposes, the facts that I've identified as undisputed are undisputed for trial purposes. The trial will be limited to the

matters on which the Court stated there to be genuine issues of material fact. The Court's intention is to set the matter for trial on July 24th of this year so that the matter can be tried this summer. The Court will issue a trial scheduling order consistent therewith.

Mr. Nolan, I'm going to ask you and Mr. Giuliano to work on a short form of order denying both summary judgment motions. You don't need to repeat all of the evidentiary rulings that I've made on the record, but they will -- as I said, those evidentiary rulings will stand should the same declarations and affidavits be submitted at the time of trial, which I suspect they might well be.

All right?

MR. NOLAN: Yes, Your Honor. Thank you.

MR. GIULIANO: Thank you, Your Honor.

THE COURT: Thank you both.

THE COURT: All right. I'm going to turn now back to 20-08049, Trustee v. Walia. This too is an adversary proceeding seeking recovery of certain transfers. The causes of action set out in the adversary proceeding are core proceedings, which this Court may hear and determine under Title 28, Section 157(b)(2) and the orders of reference in effect in the Eastern District of New York and is proper before this Court.

As with the prior adversary proceeding, these

matters have been pending for some time. And again, it's not the Court's practice to let matters fester for this long. Apologies to the parties for the length of time it's taken to get to today's ruling.

This too is a ruling in narrative form. And under Bankruptcy Rule 7052, it includes the Court's findings of undisputed facts as well as conclusions of law in accordance with 2056(g) of the Federal Rules of Civil Procedures incorporated by Bankruptcy Rule 7056, the facts that are stated by this Court to be undisputed are undisputed for purposes of the ultimate trial.

This case involves two transfers sought to be recovered by the trustee through summary judgement. And there's also a partial summary judgement motion by the Defendants. I'll address these together.

First, the trustee seeks recovery of a $2.5 million wire transfer made on April 15 of 2016 from an M&T bank account of the Debtors, the Debtor, CHT, that was made to a JP Morgan Chase account, Chase bank account of the defendant, Niknim. A transfer was made at the direction of Mr. Walia and was made in connection with -- arguably made in connection with an asset purchase transaction, which I'll describe in more detail and defined as the Porteck transaction.

The second claim is to recover a $1,520,000 wire

transfer made in June of 2017 from the Debtor's Robinson Brog IOLTA account, law firm IOLTA account. That transfer was sent to a JP Morgan Chase bank account of Niknim. I'll refer to that as the second transfer and the $2.5 million wire as the first transfer. The parties have provided an extensive set of -- extensive joint set of undisputed facts. The parties then separately provided their own proposed undisputed facts.

Trustee claims that both the first transfer and the second transfer either intentional fraudulent transfers and/or constructive fraudulent transfers. The defendants in their partial summary judgement motion essentially seek dismissal of the trustee's claims on a standing theory that the trustee lacks standing to use Section 544 of the Bankruptcy Code to invoke the remedies of state law creditors in the New York DCL.

For the reasons to follow, the Court is denying the trustee's request for summary judgment on the first transfer, being the $2.5 million wire transfer made in April of 2016, is granting summary judgment to the trustee on the second transfer claim, the $1,520,000 transfer made to Niknim in June of 2017. All other relief sought by the Trustee is denied and the Defendant's motion for partial summary judgement is also denied.

I am going to direct the parties to return to

mediation and I'm going to set a trial date in June of 2024. But I didn't want to jump past that part before I go through the elaborate ruling. But this case will also be set for trial on the remaining claims on July 24th, but I am directing the parties to return to mediation.

At all relevant times, the Debtors were a consolidated enterprise of several companies aggregated through a series of acquisitions and operating in the healthcare space, primarily in revenue and practice management services for physician practices. The debtors are as stated in the pleadings. I won't read all of their names back into the record, but they do include the entity Constellation Healthcare Technologies, which is a debtor that I'll refer to as CHT. CHT maintained a checking account at all relevant times at M&T Bank.

In 2015, Mr. Paul Parmar was the chief executive officer of CHT and was looking to acquire a medical billing company. He became interested in purchasing Porteck Corporation, which I will refer as Porteck. Se joint statement Paragraph 26. At that time, Porteck was a technology services company in the healthcare space owned, controlled, and operated by Defendant, Arvind Walia. Mr. Walia was its CFO.

At that time, Porteck had two business lines, AHMS and PC Advantage, which I will refer to as PCA, which both

provided medical billing services.

Niknim Management Inc, which I call Niknim, is a New York corporation registered and operating from Mr. Walia's residence on 27 Kettlepond Road in Jericho, New York. Mr. Walia was the sole officer, employee, and shareholder of Niknim. Mr. Walia formed Niknim to manage his consulting work, take care of his personal investments, and family trust. Niknim followed no corporate formalities and maintained no resolutions of shareholders or minutes.

In March of 2015, the debtor entity Physician Practices Plus acquired the assets of Porteck pursuant to an asset purchase agreement executed that same month. I'll call that the Porteck APA. The sellers were Porteck, Walia, the Walia Trust, and the Janaminder Trust. Mr. Walia executed the APA on behalf of himself and the Janaminder Trust and Porteck. The Walia Truste never signed the APA.

Mr. Parmar executed the APA on behalf of the debtor, Physicians Practice. The APA provides for a purchase price of $12.8 million even though Mr. Walia had agreed in writing to sell the Porteck assets for $10.8 million. The purchase price was juiced up -- my phrase, not the parties. The purchase price was juiced up because Mr. Parmar told Mr. Walia that he needed to add $2 million as "deal fees". Joint Fact 35.

Mr. Walia was unconcerned about the deal price

being juiced up, Joint Fact 37.

In fact, Mr. Walia testified in his deposition that he really paid no attention to what Mr. Parmar was doing when the APA purchase price was set at $2 million more than the parties had agreed. When asked when you were negotiating with Mr. Parmar or Orion, "Was the purchase price supposed to be $10.8 million?"

Answer, "Correct."

Question, "When did it change to $12.8 million?"

Answer, "At some point Mr. Parmar stated there are fees to close this deal that have to be included in the purchase price. I said as long as my share of the purchase price doesn't change, it doesn't concern me." That's Page 134 of Mr. Walia's deposition.

The evidence in the record is that the actual deal fees, the fees paid to the abstract business advisor's broker, was $192,000. So one-tenth or so of the nearly $2 million by which the purchase price was juiced up.

In terms of the value of the assets acquired by the debtor entity, the net asset value of the AHMS business was $1.35 million. The assets were valued at $2.35 million, but there was still an outstanding $1 million note. The value of the PCA side was $2,546,000, but there was still an almost half-million note outstanding, an almost $1.9 million loan outstanding. So the actual value of the assets as

acquired from Porteck at the time that they were acquired was $1.824 million being the net asset value of AHMS and the net asset value of PCA.

Despite the written record of the asset valuation, Mr. Parmar and Mr. Walia agreed to the value of the assets being $10.8 million and apparently was five times the 204 EBITDA of $2.2 million. And again, that five times multiple is before the $2 million was added into the transaction.

Closing did occur in March of 2015. Bank records provided in the summary judgement evidence memorialized a wire of $9.8 million from the debtor Constellation Healthcare Technologies to the IOLTA account at Robinson Brog, which was used to close the Porteck sale.

Of that $9.8 million, $6.8 million was wired on to Mr. Walia and $3 million went sideways in the vernacular to another non-debtor entity controlled by Mr. Parmar called First United Health.

The Court notes this portion of the extensive factual background to the extent that it will ultimately relate to the Court's conclusions after trial as to whether or not there was an intentionally-fraudulent transfer in the second stage of the transaction because the trustee is not seeking to recover the $6.8 million paid to Walia in the Porteck transaction.

Once the Porteck deal closed shortly thereafter in

June of 2015, Mr. Walia was installed as the chief executive officer of the Debtor's main operating company, Orion Health Corp., and became the chief technology officer of Constellation Healthcare Technologies. He continued to serve in those capacities through the fall of 2018.

While Mr. Walia was CEO of Orion and CTO of Constellation Health Technologies, being on or about April 15 of 2016, the debtor, Constellation Health Technologies, transferred $2.5 million from its JP Morgan account to Niknim. That's what I referred to earlier as the first transfer.

The dispute between the parties seems to center around a portion of the asset purchase agreement which concerns the alleged balance of the purchase price and the need for funds to be escrowed in accordance with Section 1.6 of the APA. In his affidavit at Docket 64, Mr. Walia testifies that the stated purpose of the escrow arrangement was to protect the rights of Physicians Practice, the actual acquirer, as purchaser under the Porteck APA to receive $2.5 million to the extent such funds were required to indemnify Physicians Practice.

As a practical matter, the arrangement was not necessary to protect the buyer because it simply withheld payment of the $2.5 million.

As far as what the parties' written agreement

calls for, however, Section 1.6 of the APA provides that for purposes of partially-securing the seller's obligations, the amount of $2,500,000 shall be delivered by the buyers at closing to the escrow agent by wire transfer of immediately available funds pursuant to an escrow agreement substantially in the form attached as Exhibit A to the APA. Other conditions are stated in the APA concerning what the escrow agreement would look like.

Section 1.6 clearly required certain conditions of the escrow including that it be established and that it be funded upon occurrence of certain events. However, no escrow agreement was ever executed and no escrow account was ever established. See Joint Facts 46 through 49.

Despite Walia's assertion that the $2.5 million was owed to him or his company, the books and records of the Debtor reflect no antecedent debt at the year ending December 2015. There is no antecedent debt reflected -- there is no debt reflected on the books and records as being owed to Walia or Niknim. The Debtor's books and records reflect no debt being owed as a result of the Porteck transaction as of the end of 2015.

The Debtor's 2016 books and records did not evidence the satisfaction of any antecedent debt of $2.5 million or any increase in the net assets of the Debtors as a result of that $2.5 million transfer.

The Trustee asserts that the $2.5 million transfer was fraudulent based in part on an email that Mr. Parmar sent to Mr. Walia on the date of the transfer, stating, "I am willing to give you $3.5 million in return for you to allow me to structure it property internally, which requires I close the file with the $2 million payment."

On the same day as that email, the Debtor transferred $2.5 million from its M&T account, the M&T account of CHT to the JP Morgan account of Niknim. That transfer was sent at Mr. Walia's direction. The parties concede that that transfer occurred within two years prior to the petition date.

The second transfer at issue involves a 2017 transaction and agreement under which Mr. Walia agreed to sell to Mr. Parmar or a designated entity a software company that Mr. Walia indirectly owned called AllRad Direct LLC, which at that time was a successful software company. Mr. Walia owned AllRad indirectly through his ownership of an entity, Object Tech Holding LLC.

The sale was memorialized by a membership interest purchase agreement, or MIPA, dated June 2017 between Object Tech as seller and Physicians Healthcare Network Management Solutions as buyer. That entity, Physicians Network Solutions, is not and was not one of the Debtors, but was again a third party entity owned or controlled by Mr.

Parmar.

The MIPA required a due diligence report and the negotiations required the diligence report to be prepared in connection with the sale, but that due diligence report was never completed. The MIPA required various schedules to be provided. Those schedules were never completed. The MIPA had multiple sections which were never completed, such as 1.3, earnout payments; 1.4, discharge of debts and liabilities, maintenance of working capital. The MPIA also called for certain revenue projections, balance sheets or statements of assets and liabilities to be provided. Those were never provided. State and federal tax returns that were called for under the MIPA from the sellers were never provided. And the Debtor's board of directors never approved the purchase. See Joint Statements of Fact 60 to 62, 66, 68, and 69.

Despite these deficiencies, the MIPA sale closed in June of 2017 and Debtor's funds, $1,520,000, was wired out of the Robinson Brog IOLTA account to the Niknim bank account at JP Morgan Chase. Correspondingly, all of the shares of AllRad were transferred, but transferred to the non-debtor entity, Physicians Network Solutions. No assets were ever transferred in connection with the AllRad Object Tech transaction to any of the debtors.

At no point during 2017 did any of the debtors'

books and records evidence an antecedent debt of $1,520,000 or any other debt owed to either of the defendants in connection with Object Tech or AllRad. In fact, the debtors' books and records do not evidence the satisfaction of any antecedent debt or increase in net assets of the debtors through the acquisition of the interest in Object Tech or AllRad. The second transfer occurred within eight months prior to the petition date, so well within the two-year period.

With respect to the Court's legal determinations, again, I won't recite the standard for summary judgment. It's well-known by the parties. The Court has determined that there are certain material facts which are not disputed and other material facts as to which a genuine dispute does exist. I've set out under Rule 56(g) the facts which are undisputed for summary judgment purposes. And therefore for the remaining portions of the adversary proceeding are also undisputed for trial purposes.

I'm first going to turn to Sections 548(a) of the Bankruptcy Code for actual fraudulent transfer and New York DCL 273-A. Bankruptcy Code Section 548(a)(1)(B) allows a trustee to avoid any transfer of an interest that was made two years prior to the petition date if it was an actual fraudulent transfer. New York DCL Section 273(a) provides that every conveyance made without fair consideration when

the person making it is a defendant in an action for money damages or a judgement in such action has been docketed against him, it's fraudulent as to the plaintiff in that action without regard to the actual tent of the defendant if the debtor fails to satisfy the judgement. See Lyman Commerce v. Lung, 2015 U.S. District LEXIS 51447, *17 (S.D.N.Y. 2015).

Whereas here a judgment has already been docketed under New York DCL 273-A, there is no requirement that the transfer at issue have rendered the debtor insolvent. See Cadle Company v. Newhouse, 2002 U.S. Dist. LEXIS 15173 (S.D.N.Y. Aug. 16, 2002).

Here, there was a final judgment entered in the Southern District of Texas in excess of $200,000 in December of 2015. That judgement preceded both of the transfers at issue and remained outstanding at the time of the bankruptcy petitions. Proof of claim was filed on behalf of that judgement creditor. Thus that federal court judgment is sufficient as a matter of law to satisfy DCL 273-A as to any transfer which was made which lacked fair consideration.

Trustee has also alleged under New York DCL 273, 274 and 275 that both transfers were not made in good faith or for fair consideration. Conveyance is vulnerable to attack by a creditor without regard to the actual intent of the transferor if the -- without -- if the transfer is

considered to have been in constructive fraud of creditors. See Laco X-Ray, 88 A.D.2d 425.

The transfer is constructively fraudulent if made without fair consideration of any if the following conditions are met. The transferor is insolvent or would be rendered insolvent by the transfer in question. There is no solvency analysis in this adversary proceeding. Transferor is engaged in or is about to engage in a transaction which has a reasonably small capital or the transferor believes it will incur debt beyond its ability to pay.

Even if there is fair consideration, a transfer is constructively fraudulent in the absence of good faith on the part of both the transferor and the transferee. CIT Group v. 160-09 Jamaica Avenue, 25 A.D.3d 301, 303.

This Court, as I've stated at the outset, has determined that genuine issues of material fact exist as to whether or not the first transfer can be avoided either as an actual intent fraudulent transfer or as a constructive fraudulent transfer.

Those issues include whether or not the first transfer was in fact a payment due in connection with the Porteck sale despite the noncompliance with the escrow provisions of a purchase agreement.

However, there are no genuine issues of material fact as to the second transfer at least as to the direct

payment to the defendant, Niknim. It's undisputed that the second transfer of funds that belonged to the debtor. Those funds were paid to a third-party corporation in connection with a transaction by which assets were conveyed to a non-debtor entity, being Physician Network Solutions, an entity controlled by Mr. Parmar.

Physicians Network was owed no antecedent debt. Niknim was owed no antecedent debt, and there is no consideration in that transaction for the debtors.

As far as the intentional fraudulent claim under 548, Bankruptcy Code Section -- excuse me. That section allows the trustee to avoid any transfer made within two years before the petition date if made with actual intent to hinder, delay, or defraud any creditor to which the debtor was or became liable.

Similarly, under New York DCL 276, every conveyance made or obligation occurred with actual intent to hinder, delay, or defraud present or future creditors is voidable. As this Court had stated in (indiscernible) closeout the statutes are -- the statutes are analogous and can be analyzed together.

An actual fraudulent transfer can be made -- can be found, excuse me, where a debtor had an interest in the property transferred, which it did in both transfers. The transfer occurred within two years of the petition date.

Again, it did in both transfers. But the transfer was made with actual intent to hinder, delay, or defrauded a creditor. See In re Jacobs, 394 B.R. 646, 658-653 (Bankr. E.D.N.Y. 2008), which requires the trustee to establish actual intent of the transferor by clear and convincing evidence.

As typically in fraudulent and actual fraud settings, the courts typically look to various badges of fraud. I'll highlight those that the Court has considered here for trial purposes.

First is as far as lack or inadequacy of consideration. This Court has already noted in respect to the Porteck transaction that the agreed sale price of $10.8 million was juiced up by $2 million at Mr. Parmar's request. Mr. Walia was aware of the inflation of the purchase price and essentially didn't care.

As I've already noted, the APA under the Asset Purchase Agreement for Porteck established various requirements for an escrow agreement and the funding of an escrow account, none of which occurred. Various disclosure documents, due diligence requirements were required in the purchase transaction. None were provided.

As far as the AllRad transaction is concerned, the Debtors gave up $1.52 million and got nothing in exchange.

As far as close or family relationship, it's clear

that Mr. Parmar and Mr. Walia were both officers and insiders at the time of both transfers. They knew each other going back to at least 2015. They both served in the highest level of officer positions at the debtors Orion and CHT. Mr. Walia was clearly an insider of the debtors at the time of both the first and second transactions.

On financial condition, there's no solvency analysis here so the Court is not passing on solvency at the time of the transfer.

The Court has determined that genuine issues of material fact exist as to whether the first transfer, the $2.5 million in Porteck, can be avoided as an intentionally fraudulent transfer either under the Bankruptcy Code or New York DCL.

Again, as to defendant Niknim in the second transfer, there are no genuine issues of material fact. There was no fair consideration in that transaction for the debtor estate for the $1.52 million.

I want to turn just for a couple of minutes to the recovery theory of the trustee against the defendants Walia and Niknim. Not the liability theory. Liability theories are clear, but the recovery theory.

With respect to the $1.52 million fraudulent transfer, the trustee seeks recovery both against Niknim, who received the money, and defendant Walia given his

control position at Niknim.

Under New York law, a creditor may recover money damages against parties who participated in a fraudulent transfer and are either transferees of the assets or beneficiaries of the conveyance. See Tae H. Kim v. Jisung Yoo, 311 F.Supp.3d 598, 613 (S.D.N.Y. 2008) and Cadle Co. v. Newhouse, 74 F. App'x 152, 153 (2d Cir. 2003).

The Court has determined that genuine issues of material fact exist as to whether Mr. Walia individually adequately participated in or adequately benefitted from the $1.25 million payment that was made to Niknim. So summary judgment is not granted on that portion.

The trustee has also asserted that defendants Walia and Niknim were alter egos of each other and should be held jointly severally liable on an alter-ego veil piercing analysis. New York law is clear that alter ego liability exists when a parent or owner uses the corporate form to achieve fraud for when the corporation has been so dominated by an individual or another corporation, that separate identity has been so disregarded that -- excuse me, that its separate identity should be disregarded. See City of Almaty v. Ablyazov, 2019 U.S. Dist. LEXIS 55183, *14 (Bankr. S.D.N.Y. 2019). Courts consider factors such as whether or not the owner of the corporation has abused the privilege of doing business in corporate form, whether there has been a

failure to adhere to corporate formalities, inadequate capitalization, comingling of assets, or use of corporate funds for personal use. See East Hampton Union Free School District v. Sandpebble Builders, 66 A.D.3d 122, 127.

The Court is not prepared to conclude that the trustee has met his burden of proof as a matter of law on alter ego liability of Mr. Walia in connection with the $1.52 million transaction with Niknim.

That said, the Court has found for Rule 56(g) purposes certain alter ego facts to be undisputed and therefore found for purposes of trial. Those are Niknim was incorporated in 2015 and at all times had a single employee, officer, and shareholder, Mr. Walia. Niknim was formed to manage Walia's consulting work, his personal investments, and his family trust. Niknim was paid by the Debtor as a personal accommodation to Mr. Walia for tax purposes.

Walia was receiving money from Orion in 2017, which he would deposit at his convenience either into his personal checking account or an account of Niknim.

In 2016 and 2017, Walia would deposit monies from his other investments, his family trust and his wife's account into Niknim bank account. Walia used the Niknim account to pay personal expenses of his such as pool maintenance, purchasing suits, salon treatments, voice lessons, homeowner dues, and car payments. Niknim followed

and observed no corporate formalities and maintained no resolutions or shareholder minutes. Niknim was initially capitalized with one or two-thousand dollars. So even though the Court has not found as a matter of law alter ego, those facts are established for purposes of trial.

I'll turn briefly now to the defendant's partial summary judgement motion. As stated near the outset, it's essentially arguing that the trustee lacks creditor standing under Section 544 to invoke the New York DCL provisions.

The rights available through 541(b) of the Bankruptcy Code are limited to those of an existing unsecured creditor and are derivative of the rights of an actual unsecured creditor. See Lippe v. Bairnco Corp., 225 B.R. 846, 852 (S.D.N.Y. 1998).

Creditors seeking recovery through Section 544(b) can only attack transfers to the extent a creditor with an allowable claim could do so under New York law. Here, it's clear and undisputed that the trustee has adequate standing to utilize Section 544(b) and thereby use the rights of creditors under New York DCL Law given the existence of unsatisfied judgements at the time of each of the two transfers.

In addition, the Trustee has noted in its summary judgment pleadings the existence of over $100 million of unsecured claimants that existed at the time of each of the

transfers. So the request for summary judgment of the defendants is also denied.

I'm going to direct, Mr. Nolan, that you and Mr. Rosen and Mr. Scheiman work on a form of order. It simply needs to recite granting the relief and denying the relief as set out on the record today. It doesn't need to be a significant restating of the why reasons. The why reasons are all part of the record of an order granting the summary judgment relief that was granting and denying all remaining relief. As I stated, I am directing the parties to return to mediation. I know that you all went, didn't settle. Hopefully with the resolution, at least partial resolution of some of the issues today, the parties can engage in a more meaningful effort to resolve the claims for which liability has been determined and those that remain.

I'm also going to set a trial down to start July 24th. I'll set my pretrial requirements. While that's only 90 days from today but also several years from when the litigation started, I think you all generally know what you're going to bring to the trial. So there's not a lot of reinventing of wheels that need to be done. I expect I'll see the same declarations and probably not a whole lot more, but I'll get to observe witness testimony at least through cross-examination and make the necessary credibility assessments that I need to make to close the gap on the

issues that the Court was not prepared to make dispositive findings as a matter of law today.

All right? Anything else we need to address today then on this adversary proceeding?

UNIDENTIFIED SPEAKER: I guess just a couple points of clarification, Your Honor. Do we want to set a date -- the Court is setting a date by mediation in like the next 30 days?

THE COURT: Thank you. So the Court's anticipation was within 30 days from now you would go back to the mediator. I don't remember who you all used before. You can go back to him or her, you can start over with someone different. It seems to be more cost-effective and time-efficient to go back to who you all used before, but I will leave that to the parties.

I'm envisioning that as something that can be done in the next 30 days so that you essentially have -- it's three chunks of 30 days. You've got 30 days to try to settle it, 30 days to prepare for whatever else you need to submit for pretrial purposes, and then 30 days to prepare for the trial. Those are somewhat permeable deadlines, but I think that give you all time to focus on settlement before refocusing on the trial.

UNIDENTIFIED SPEAKER: Okay. And as far as trial, Your Honor, are you in Brooklyn now?

THE COURT: I am in Central Islip.

UNIDENTIFIED SPEAKER: Okay. So we have the opportunity to be present, or are we doing it by Zoom or...

THE COURT: Trial will be in-person under judicial conference protocol since we have exited the Zoom -- exited the COVID period. Because I anticipate I'm going to be taking live testimony, that would be taken live and in-person. So the witnesses will need to be here in my courtroom. I will use my ongoing protocol that I hold my trials in Central Islip and I hold my settlement conference in Brooklyn if that's of any help to you, although July on Long Island tends to be a very beautiful time of year I am told.

UNIDENTIFIED SPEAKER: You're told. All right.

THE COURT: Some of you may be on your way to or from other summer residences that you maintain, borrow, or lease out further east from the courthouse. So it's a beautiful time of year on Long Island and not so bad in Central Islip.

UNIDENTIFIED SPEAKER: It's a beautiful time to be there, Judge.

THE COURT: And I'll set aside adequate time to get the case tried. We're holding July 24th and July 25th, but I gave the 24th, part of that morning to the other adversary proceeding.

UNIDENTIFIED SPEAKER: Okay. Judge, I just want to say thank you to you and your chambers for the many, many accommodations in terms of the adjournments of the hearings on the motion. So thank you.

UNIDENTIFIED SPEAKER: I would like to add my thanks also, Your Honor. I appreciate it very much. And I have nothing further to add.

THE COURT: Well, I know you all prefer hearing yourselves argue than me rule, but I know we had teed this up for summary judgment arguments. But again, given the delays that have just happened in the adversary proceeding and my desire for it no longer to sit without resolution, you'll still have time to practice your well-honed skills in my courtroom examining witnesses as opposed to arguing to that little dot on your computers that constitutes a camera. So you'll have plenty of time to mix it up live out here unless you take it out of my hands and resolve it. All right?

UNIDENTIFIED SPEAKER: Well, we'll certainly try to, Your Honor.

THE COURT: All right. So then we'll be adjourned -- yes.

UNIDENTIFIED SPEAKER: Thank you very much.

THE COURT: Thank you all. (indiscernible) we'll go off the record. Thank you.

(Whereupon these proceedings were concluded)

I N D E X

RULINGS

CERTIFICATION

I, Rita Weltsch, certified that the foregoing transcript is a true and accurate record of the proceedings.

Rita Weltsch

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